

ANTHONY J. PIRROTTI, JR., ESQ. (AJPJR0905)
PIRROTTI LAW FIRM LLC
2 Overhill Road, Suite 200
Scarsdale, New York 10583
Attorney for Defendants
(914) 723-4333

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
TRUSTEES OF THE BRICKLAYERS AND ALLIED
CRAFTWORKERS, LOCAL 5 NEW YORK
RETIREMENT, WELFARE, LABOR MANAGEMENT
COALITION and APPRENTICE TRAINING AND
JOURNEYMEN UPGRADING FUNDS, and
BRICKLAYERS AND ALLIED CRAFTWORKERS
LOCAL 5 NEW YORK,

ANSWER

Case Number:
07 CV 7529

Plaintiffs

- against -

CARMODY, INC., CARMODY BUILDING CORP.,
CARMODY CONCRETE CORP., CARMODY
CONTRACTING, INC., CARMODY ENTERPRISES,
LTD., CARMODY MASONRY CORP., and BIAGIO
CANTISANI, Individually and d/b/a CARMODY,

Defendants.

-----X
MADAMES/S I R S :

PLEASE TAKE NOTICE that the Defendants, CARMODY, INC., CARMODY BUILDING CORP., CARMODY CONCRETE CORP., CARMODY CONTRACTING, INC., CARMODY ENTERPRISES, LTD., CARMODY MASONRY CORP., and BIAGIO CANTISANI, Individually and d/b/a CARMODY, hereby appear in this action and interpose the following Answer to the Plaintiffs' Complaint:

1. The answering defendants deny knowledge or information to either admit or deny allegations set forth in Paragraphs numbered 1, 2, 3, 4, 5, 6, 7, 8, 9, 18, 20, 27, 28, 49 of the Complaint.

2. The answering defendants admit to each and every allegation set forth in Paragraphs numbered 10, 11, 12, 13, 14, 15, and 18, of the Complaint, except deny that the principle place of business is in Mt Kisco, New York.

3. The answering defendants deny each and every allegation set forth in Paragraphs numbered 16, 17, 21, 22, 23, 25, 29, 30, 31, 32, 33, 34, 35, 36, 38, 39, 41, 43, 44, 45, 46, 47, 50, 51, 52, 54, 55, 56, 58, 59, 60, 61, and 62.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

4. Defendants, CARMODY, INC., CARMODY BUILDING CORP., CARMODY CONCRETE CORP., CARMODY CONTRACTING, INC., CARMODY ENTERPRISES, LTD., and/or BIAGIO CANTISANI, Individually are improper parties to this proceeding.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

5. Plaintiff fails to set forth a cause of action upon which relief can be granted.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

6. There is no privity on contract between Plaintiff and Defendants, CARMODY, INC., CARMODY BUILDING CORP., CARMODY CONCRETE CORP., CARMODY CONTRACTING, INC., CARMODY ENTERPRISES, LTD., and/or BIAGIO CANTISANI, Individually.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

7. The losses and/or damages suffered by the plaintiffs, if any, were caused in whole or in part by the actions, omissions, and culpable conduct of persons and/or entities other than these answering defendants for which these answering defendants cannot be held liable.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

8. Plaintiff has waived its rights alleged in the Complaint due to laches.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE

9. as it pertains to Defendants, CARMODY, INC., CARMODY BUILDING CORP., CARMODY CONCRETE CORP., CARMODY CONTRACTING, INC., CARMODY ENTERPRISES, LTD., and/or BIAGIO CANTISANI, Individually, this action is frivolous and has no merit in law or fact and is in violation of Rule 11. Plaintiffs' alleged

cause(s) of action under the Employee Retirement Income Security Act of 1974, as amended, 29 U.S. C. §1001, et. seq., (“ERISA”) and §301 Labor Management Relations Act (LMRA), 29 U.S.C. §185, and/or any other statute, rule or Ordinance are in violation of Rule 11 in that: 1) they are presented for improper purposes; 2) they are not warranted by existing law or by a non-frivolous argument for the extension, modification or reversal of existing law or the establishment of new law; and 3) they have no evidentiary support, and are not likely to have any evidentiary support after a reasonable opportunity for further investigation or discovery. This Court lacks jurisdiction over the subject matter of the plaintiffs’ remaining claims, if any.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE

10. Any recovery for non-economic loss had by the plaintiffs against the answering defendants must not exceed the answering defendants’ proportionate share of culpability.

AS AND FOR A EIGHTH AFFIRMATIVE DEFENSE

11. The Complaint fails to set forth the pertinent facts with sufficient particularity.

AS AND FOR A NINTH AFFIRMATIVE DEFENSE

12. The losses and/or damages suffered by the plaintiffs, if any, were caused in whole or in part by the actions, omissions, and culpable conduct of the plaintiffs, their agents, employees, servants, assigns, co-employees and/or predecessors in interest.

12. The losses and/or damages suffered by the plaintiffs, if any, were caused in whole or in part by the actions, omissions, and culpable conduct of the plaintiffs, their agents, employees, servants, assigns, co-employees and/or predecessors in interest.

AS AND FOR A TENTH AFFIRMATIVE DEFENSE

13. Plaintiff failed to fulfill the conditions precedent prior to commencing this action pursuant to the agreement and statutory law.

AS AND FOR A ELEVENTH AFFIRMATIVE DEFENSE

14. Any award to the plaintiffs for economic loss shall be reduced by the amount of economic recovery received from collateral sources.

WHEREFORE, the answering defendants demand judgment: (1) dismissing the Complaint of the Plaintiffs herein in its entirety, together with attorney's fees, costs, interest, and disbursements of this action; and (2) awarding the answering defendants such other and further relief as this Court deems just, suitable and proper.

Dated: Scarsdale, New York
October 12, 2007

Yours, etc.



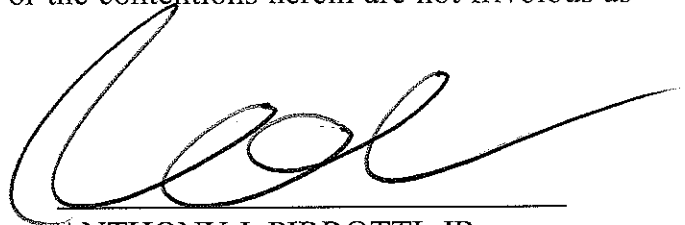
ANTHONY J. PIRROTTI, JR. (AJPJR0905)
PIRROTTI LAW FIRM LLC.

Attorneys for Answering Defendants
2 Overhill Road, Suite 200
Scarsdale, New York 10583
(914) 723-4333
E-mail: ajpjr@pirrottilawfirm.com

ATTORNEY'S CERTIFICATION

Pursuant to Rule 11, the undersigned, an attorney admitted to practice in the United States Court of the Southern District of New York, certifies that, to the best of my knowledge, information and belief, formed after an inquiry reasonable under the circumstances, the presentation of the paper or the contentions herein are not frivolous as defined in Rule 11.

Dated: October 12, 2007



ANTHONY J. PIRROTTI, JR.

VERIFICATION

STATE OF NEW YORK)
) ss.:
COUNTY OF WESTCHESTER)

BIAGIO CANTISANI, being duly sworn, deposes and says:

I am a defendant in the above-entitled action.

I have read the annexed **VERIFIED ANSWER**, know the contents thereof and the same are true to my knowledge, except those matters therein which are stated to be alleged upon information and belief, and as to those matters, I believe them to be true.

As to issues of law requested by the plaintiff to be answered in this document, defendant relies upon information supplied by defendant's counsel and verifies the truth and veracity of all factual parts of this document.


Biagio Cantisani

Sworn to before me this
12 day of October, 2007


NOTARY PUBLIC

ANTHONY PIRROTTI, JR.
Notary Public, State of New York
No. 4979512
Qualified in Westchester County
Commission Expires April 1, 2011

STATE OF NEW YORK)
)
COUNTY OF WESTCHESTER) ss:

ADAM J. GLATT, being duly sworn, deposes and says:

I am not a party to the action, am over the age of eighteen (18), and reside in East Fishkill, New York.

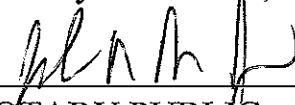
On October 15, 2007, I served the within **Answer** by depositing a true copy thereof, enclosed in a post-paid wrapper, in an official depository under the exclusive care and custody of the U.S. Postal Service within New York State, addressed to each of the following persons at the last known address set forth after each name:

GELLERT & KLEIN, P.C.
75 Washington Street
Poughkeepsie, New York 12601
Attn: Stephen E. Ehlers, Esq.



Adam J. Glatt

Sworn to before me this
15th day of October, 2007



NOTARY PUBLIC

JOSEPH A. ROSSI JR.
Notary Public, State of New York
No. 02RO6165002
Qualified in Westchester County
Commission Expires May 7, 2011